Ad Hoc Committee to Review the Criminal Justice Act
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Transcript: Panel 5—Views from CJA Panel Attorneys and District Reps.

Dr. Rucker: My name is Bob Rucker. I'm from the City Executive Office of the Ninth Circuit in San Francisco. I'd like to welcome you to the afternoon part of the hearings and thank you very much for coming and particularly the witnesses before us here. Let me say that I'd like everybody to remember to turn their cell phone off or at least on vibrate, if you wouldn't mind doing that please right now and for those of you who are testifying before us, I would ask you to speak directly into the microphones, somewhat directional so you need to get fairly close to them to be able to be heard and we are streaming this live and it will be recorded as well so we really do want to have the record complete so if you would have those microphones before you.

We're going to go right into this without me getting much way of introduction other than to thank you. I will introduce the people here in the panel who were doing the initial questioning. To my immediate right is the Chair of our CJA Committees is the Honorable Judge Cardone from Western Texas; immediately to the right is Judge John Gerrard from Nebraska; to my left is our attorney representative, Mr. Chip Frensley; and to his left is Mr. Reuben Cahn who is the Community Defender from the Southern District of California and San Diego.

What I'd like to do is begin with statements from you. We've read your written testimony so we'd like for you not to read from that. If you would just give us about five minutes of opening statement about comments that you'd like to make and for us to sort of use as a jumping off point and Mr. Coan, I'd like to begin with you if I may.

Tom Coan: Thank you doctor. Probably not the most loquacious attorney and I'm going to be quite brief with you today. I've said a lot in my letter but I would like to make a statement about at least a couple of the points that I think re very important. First of all, a little bit of background. I've been on the panel for about twenty years. I think I got on the panel in 1994. I graduated from law school back in 1988 and for a couple of years I worked for a small civil litigation firm. We mostly did plaintiff's business litigations, securities, mostly suing stockbrokers for churning accounts for having unsuitable investments.

I started doing criminal work when I got out of my own after leaving that small firm and I found that I like the criminal work. First of all, it wasn't contingent fees. I wasn't losing night sleeps over whether I would paid, or how much time I would put into it and how much of my own money I

would put into it. I was on state at that time and the state rate was about $30, $35 bucks an hour in the mid-1980s or early, late ‘80s early ‘90s. A friend of mine Dan Finer worked in my office and he hooked me into federal work and I soon got on the panel, started as doing appeals and habeas which I thought was a great way for me to learn from other experienced attorneys by reading their transcripts and reading about the law and I learned to love the work.

I haven’t looked back since then. I’ve may be done a couple of civil cases in the past twenty years so all criminal defense. My mix is split between retained and federal criminal appointments. I no longer take state criminal appointments primarily because of the money. Quite frankly, I would do more state court appointments because there are more trials here than there are in federal court but the money is just prohibitive. I think it’s only $40, perhaps $45 now in state court here in Oregon.

I got onto the panel in ‘94. Steve Wax was our federal defender. It was a very well-run office. Steve, what I didn’t know, is Steve had really set a culture here. There was an ingrained culture of working hard on your cases, working real hard. I made that point in my letter when I once asked Steve about an appeal that I was working on and I just couldn’t see any issues in it and I’ve told him that I was taking a filling in “Anders brief” and Steve looked at me and said, “Tom, in my twenty something years of practicing, I have not filed one ‘Anders brief.’” Worked back and looked harder and found an issue. The court didn’t laugh at it. The client was pleased that he had an attorney fighting hard for him.

That was the culture that Steve set and it’s continued with our present leader Lisa Hay at the Federal Defender’s Office. As you’ve heard from other people who have testified the Federal Defender acts as the panel administrator and this is the main point that I want to try to make here as I think it works really well. You’ve heard about the department or the panel that are these three people in these CJA Office who helped to managed our cases and work on our vouchers and talked to us about whether or not they’re appropriately supported. There is a glass wall so to speak between that office and the rest of the federal defenders for confidentiality purposes but once we do work with them and once we get our voucher in, what I request for an expert, if they believe it is a reasonable request they will pass it on with a recommendation to the court that we get the help that we’re looking for and I’m rarely, if ever, turned down.

I can’t think of an instance where a judge has contact me and said, “Mr. Coan, I’m not going to approve this. I don’t think it’s reasonable.” I’ve had a couple of instances where judges have called me about bills because they didn’t understand for example who I was, who the bill was for

because the expert may have been billing under the name of his firm rather than the individual and the judge thought, know the expert as the individual and not the firm.

I think that this helps in a number of ways by having the Federal Defender's Office act as our agent in a way to help us get the funds, the resources that we need to fight the cases. As I understand it, the Federal Defender's Office each of them has their own pot of money and they have to be stewards of that money and budget for their own cases within that office. We as panel attorneys, nationwide have a large bucket of money for the entire country and the judges that they approve our bills or our request is going to come out of that one big pot that is for everybody. All the CJA panel attorneys. My thinking is in this district I believe that once the judge receives a recommendation from the Federal Defender's Office that this is a reasonable request for service they almost always pass it because by giving that recommendation, the Federal Defender's Office is essentially saying, "Judge, this is something that if one of the attorneys in our office had requested we would have said yes."

It helps the level of the playing field and while there is still rebuttable presumption I think it's something that I would recommend. That if other districts were to follow this model and have their federal defender act as the panel administrator, if the judge were to receive that they should approve it because it's their federal defender who is telling the judge, that judge this is something that we would approve, we're asking you to approve it because we want the panel attorneys to have the same resources that we have.

Sure, we don't get the money quite as quickly but there is the $800 that we can spend on an unauthorized basis but that's for the entire case and if you get wrapped up in a big case that first $800 is going to get used up pretty quickly so I'd make another recommendation that that $800 limit be changed, either for per provider or to a much larger limit so that we don't always have to be taking the time to put in a request to get the services that we need particularly if we have good reason to believe that it's going to be approved. Should somebody be working on a case and there are going on an authorize basis until the approval is made or the disapproval as it may be, they can order that person to stop the work and pay them for they have done already.

It seems to be a very small price to pay so that we can get our forces into action quickly, similarly to the way that Federal Defender's Office is able to get their investigators or others, interpreters on the case in an immediate basis. Third, I want to make a point about the CJA rates and this might go back to the sequester where we got hit with a $15 an hour hit. It was never

made up to us. There have been years since that time where there was an opportunity for example, if we have thought a $5 raise over three years we would have been paid back the $15 that we lost over one year.

In a larger sense, we are underpaid when we compare ourselves to our colleagues at the U.S. Attorney's Office and I did put into my letter what I could make from publically available information as to what I think the compensation is for salary and benefits for an Assistant United States Attorney here in Oregon whose practice[d] for fifteen years or more and I forgot the exact number because I haven't looked at it awhile, but hourly rates would be up close to $200 an hour if we were to work about 1500 hours of billable time a year. We're operating at now $129. I think I that is just we're being substantially underpaid in our rate because we have bleeding hearts and we're willing to do the good work , the hard work but it should be fair here. If we were paid more would be able to have more money to spend on resources that we need, the software, the technical et cetera and the training to be more up to date on this stuff.

As I've heard from other people who have testified over the past few months, cases have changed over the twenty or thirty years. As one judge in South Carolina mentioned when he was on the panel many years ago he went back to find an old file. I think he said it was twenty or thirty-pages long. Now we're talking about boxes and boxes and filing cabinets and hard drives is what it is so while our CJA rates have gone up generally trended up over the years, my understanding of the way that they've gone up is that it's been based upon, excuse me.

The total case maximums that we have has been based upon the increase in the rates we have so if the rates have gone up 2% the total maximum amount has gone up similarly 2%. It's taken them to account nothing about the change and the complexity of the cases. These are different cases than they were even twenty years ago when I first started and I don't think that the case maximums reflect that it should be quite a bit higher because I think that what this case maximums have the effect of doing is having this anchoring effect that judges or other people who are looking at them see them as some sort of magical anchor that they think we should stay at or under at a case.

Now, I've heard the other panel attorneys from elsewhere in the country are concerned or even scared to bill above that because they're afraid of getting cut or it's going to take longer to get paid. I think some changes should be made there. I've talked actually longer than I thought I would but I'll be happy to answer any questions when get on the question and answer when we get to the question and answer. Thank you.

Dr. Rucker: Thank you. Mr. Schweda.

Pete Schweda: Thank you, Dr. Rucker, Judge Cardone and other members of the Committee. A little bit of my history. I started as a deputy county prosecutor on Spokane, Washington. In 1981 I went into private practice. I thought I should join the . . . become admitted to practice at the federal court so I went down there and Bob Fallquist, who was the clerk gave me the application and he knew me a little bit and he said that you need to go on the panel so I did and I've enjoyed it ever since. At that the time the panel rates were $20 per hour for out of court work. This is 1981 and $30 per hour for in-court work.

At that time we had one active judge. Now, we have four active judges and six, sixteen-year judges. I've been privilege to become the panel representative for the district and my predecessor was Judge Petersen who you heard this morning so I've been the panel representative for a few years. In that way I've been able to meet Tom and Jennifer. At national conventions I've been very honored to be the Defenders Services Advisory Group representative for the Ninth Circuit. I'm elected by the other panel representatives to that position, and in that, I've also had the privilege and honor of working with Mr. Frensley, and Mr. Cahn, and Katherian Roe.

I was also honored to become a member of the Ninth Circuit oversight committee in which I had the honor of working with Judge Fischer and Dr. Rucker. This is really become a vocation for me. Outside of the panel work it's a way for me to have done some pro bono work and I feel very strongly about the need for the independence of the defense function. I don't think that we have that today. In fact, I think the recent years any semblance of independence has been greatly eroded.

The Defender Services should return back to at least at a minimum of a directorate. I don't think that's enough but it's at least a step in the right direction. They should be independent of the judiciary. I think even as a directorate they are limited in the types of positions they can take and the statements they can make because they have to be in aligned with the general protocol of the AO and so they are . . . even as an independent directorate they're hamstrung in that way.

I believe that the defender function, defense function should be governed by an independent board of directors. It can be within the judiciary. It can have members of judiciary beyond the board but I don't think it should be limited by, as a joint effort in getting the judiciary budget. In other words, right now they're governed by the budget committee, by the executive committee, they've lost the function, the staffing from the Defenders

Services committee has been lost. It was given to the judicial resources committee and it was, that was done as a cost-saving measure and they did a long study, a work measurement study and lo and behold instead of saying money the results of that study was that defenders offices across the country are understaff and they're in the process of hiring additional people.

The panel members are particularly at a disadvantage. I learned in law school and especially in the state system, you can't have ex parte communications with the judge, none. But you do in federal court and I think that that's wrong. I don't think that a panel attorney should go to a judge to ask for an expert and possibly disclosed defense strategies that haven't been fully worked out, give out confidences that your client, from your client that you otherwise would never tell a judge and I think it's also abusive the other way. I think that panel attorneys can abuse the system by trying to sell their case to the judge and there's no parity in the expert system.

Dr. Rucker and Judge Fischer when we were on the committee, the Ninth Circuit was attempting to do a study to see what the present of rate should be for experts and Dr. Rucker's employees were successful in getting records from U.S. Attorney's Office, Federal Defender's Office and from district courts in the Ninth Circuit and it was across the board, a broad spectrum of categories, across the board. All these different categories…it was basically uniformed. The U.S. Attorney's paid the most for their experts, next came the federal defenders and the least paid experts were those that were employed by panel members.

The district judges also have too much power in determining a panel members pay. There's more emphasis on judgments or excuse me, budgets now since sequestration. In my district we're required to fill out a CJA form twenty-six if, at which becomes like a little mini budget we're supposed to forecast what the entire case is going to cost to the end, it's sent to the circuit and the circuit gives approval on the proposed budget. The defense function should not be controlled by the judiciary. We shouldn't be controlled by the myriad of judicial committees there are. I will just end there and just say that I am a strong believer that we need to have an independent defense function. The courts do not control the prosecutors and they shouldn't control the defenders.

Dr. Rucker: Thank you. Ms. Nakaoka.

Lori Nakaoka: Thank you. Good afternoon. I'm from the District of Idaho and I'm standing in for Kathleen Elliot who is our CJA rep who could not make it to this hearing. I apologize that I don't have the depth of knowledge that

Ms. Elliot would have brought to the panel so there you go. I'm just a CJA attorney. The district of Idaho and I want to start with just some facts. The district of Idaho has sixty-seven panel attorneys. We are divided regionally by location in the state so we have a north central division that has fourteen attorneys. The southern division where I'm from has thirty-seven attorneys and then the eastern division also has fourteen. The panel is selected by a selection board that meets every year to review applications.

The board is made up of the federal defender, Dick Reuben, the CJA rep, Ms. Elliot and the judges and a member from the clerk's office. I don't know what really goes on the selection process. We are required to have a minimum of three years of experience in federal court with knowledge of the CJA voucher system and the e-filing and the list of what you would expect attorneys in federal court to be able to do. The panel, I'm told that the selection committee makes every effort to make the panel as diverse as possible given our lack of diversity in Idaho I think the panel reflects that lack of diversity. Of sixty-seven attorneys there are I think eleven or twelve women and maybe two or three racial or ethnic minorities.

The panel plan for Idaho calls for a twenty-five to seventy-five ratio with 25% of the cases going to CJA attorneys and 75% going to the federal defender. I think typically the CJA appointments exceed the 25% and that's I think due in part through the multi-defendant cases that we see more and more. In 2015, I'm told the CJA appointment was 40%. That brings me to the testimony that I submitted to the Committee in my written form. I raised essentially three issues that I thought should be addressed by Committee. Actually there's so many more, but that was the judicial involvement in the appointment and management and compensation issues.

The adequacy of compensation for CJA counsel and the quality of representation and I think it's important to, and like in Idaho if you look at the fact that 40% of the clients are being represented by appointed counsel, CJA counsel that's a good percentage of people who are getting funneled through the system and they are not getting access to the services that the federal defender has and they should not be deprived of those services just by luck of the draw. Our federal defender is excellent; they are staffed with incredibly attorneys. They have incredible resources and they do a great job and I think that there's a consensus in Idaho that the CJA panel attorneys don't match up to the federal defenders for obvious reasons.

I agree with other panel members. I think the case maximums are an albatross. I think they set a standard, maximum standard where I think

there's a danger that that's the expected, that's what the attorney is expected to meet regardless of the case and I think that's unfortunate. I guess what I'd like my message to the Committee would be as a CJA attorney my fundamental duty is to represent my client and that should be my only duty and I feel that the way, that the mechanisms are in place now, that I'm required to have also a duty to the court to keep fees down, to deliver representation in a way that doesn't raise eyebrows.

I don't think that every attorney caters to that sentiment, I think we try very hard to not cater to that but by setting maximums and caps and having judges review our billing and having them sit on the panels conducting the selection you really created the atmosphere where the attorneys have loyalties both to their client and this subtle pressure to please the courts and I think that's an inappropriate . . . it doesn't serve anyone well. I thank the committee for doing what you're doing and I hope that they're can be some solutions that come out of this in the long run that free up CJA counsel, give us the resources that we want, give us the ability to access them quickly like the federal defender has. Literally, I want what they want, they have. I want the resources that the federal defender has. Thank you.

Dr. Rucker: Thank you. Ms. Horwitz.

Jennifer Horwitz: Thank you, doctor and thank you to the Committee for undertaking this thorough investigation of representation under the Criminal Justice Act and for inviting me to testify today. My name is Jennifer Horwitz and I've been on the panel since 2002 but I am probably one of the newer panel representatives. I'm just moving into that my second year of my third year term.

I tried to provide you with a fair amount of background information about my district in my written comments and some of the things that may be different in my district than other district such as our standing committee and if the Committee has questions about those things, I'd be happy to try to answer them. What I want to try to do in my presentation here was just really drill own on one issue that I raised in my written materials and that the attorneys in my district care passionately about because it's really about resources, it's about parity, it's about quality of representation that brings all of those issues into focus and that's the issue of the statutory maximum and why this is an insufficient presumptive amount for probably any of the cases but my experience really covers federal felony criminal representations.

What I really want to talk about is why in my view every case, there are, I agree, with the other panel members that there, the cases have become

more complex over the years that I've been on the panel. We've seen bigger case, more multi-defendant cases, but I want to talk about why every case really has the potential exceed that presumptive amount and why this is even true for what I would consider a garden variety representation that doesn't appear on its face to be complex or extended.

In preparation for my testimony I looked at attorney vouchers in my district in the last fiscal year and there were 601 CJA 20s and 30s submitted, and 141 of those when to the circuit for approval so about 23% were over. I also looked at my own practice. Since 2002, all of the cases that I've done and about 33%, just about a third of my cases have been billed over the statutory maximum. What I did in preparation for today was I looked back at my own cases where my billing exceeded the maximum and I tried to set aside the cases that to me clearly were complex and extended cases, the large multi-defendant cases. The cases with voluminous discovery, with a lot of wiretap evidence. Cases that went to trial or cases wherein a number of legal issues were litigated.

I wanted to see in my own case load was why cases that appeared to be much more straightforward sometimes demanded more than the seventy-seven hours of work allowed by the presumptive statutory maximum and overwhelmingly just looking at my own cases, it was really because of what the particular client needed in the representation especially in terms of meeting with me and having contact with me. I've been in practice for over twenty years and in my view of all of the criminal defendants that I've represented as a state public defender, in private practice representing clients who retain me and on CJA cases the most difficult attorney-client relationship to forge and maintain is one in which I'm appointed under the Criminal Justice Act.

There are several reasons for this. I think it's really important for the Committee to understand that as far as many of our clients are concerned, we appear in their lives as part of the same system that surveilled them, seized their car, listened to their phone calls, searched their home, poured over their computer and bank records. We are part in their view when they meet us, they see us as part of a system that will not reveal witness statements in time for them to consider what that evidence is when they're trying to decide whether to take their case to trial or not.

When we first meet a client and introduce ourselves, they don't simply trust us because we've said, "Hi, I'm Jennifer Horwitz. I've been appointed to be your lawyer." We have to earn that trust and I guess I'm here to tell you that doing so can be a hard one proposition. How do we do this? We do this by spending time with them, by getting to know who they

are, their background, where they came from and how they arrived at this point in their lives where they're facing a federal indictment.

We do this if they would like us to by meeting their families, their wives, their boyfriends, their adult children and sitting down with their loved ones and telling their loved ones what is happening with the case, giving them a roadmap of what to expect. We win our clients trust not just by reviewing the evidence in the case ourselves and understanding in ourselves but by being so familiar with it that we can show our clients that we really have a mastery of the facts and the case and we can lay out for the client not just that there is an accusation but what it appears to be built on.

We earn our clients trust by explaining how the federal Sentencing Guidelines work in all of their complexity along with concepts like cooperation, substantial assistance, mandatory minimum sentences and safety valve, and in my experience we're mostly representing people who find themselves in the federal criminal justice system for the first time so they're hearing how this works for the first time. My experience is that I've represented several people in federal court have long criminal histories in state court and even they have trouble understanding what this new system to them is about and understanding the much greater peril that they are in in the federal system.

It is even harder when we're representing people who are illiterate who come from a completely different culture who may not speak English, who are completely unfamiliar with our criminal justice system, who have learning disabilities, organic brain damage or mental health issues and all of these limitations that are just listed here are issues that have come up in my practice with particular clients. If I can take the time to form a trust relationship with for example a non-English speaking client with a third grade education and convince him that I'm truly his advocate and educate him about how the federal system works then even if I exceed the statutory maximum bill in the case I have likely saved money because when it finally gets to the point in the representation where I say, "Hey, the evidence against you appears to be pretty overwhelming and this plea is the best I can get you." He will believe that I'm not just trying to wrap this case up in a way that's easy for me or the least amount of work but that I really am advocating for him.

I guess what I'm here to say is that getting to that moment in the representation takes time and it takes building a relationship and that can't always be done with the other work in the case for a total of "under seventy-seven hours." Thank you. Thank you so much for considering my testimony and I'm happy to answer any questions when it's time.

Dr. Rucker: Thank you. Help me with this, Mr. Hoovestal.

Palmer Hoovestal: That's right. Thank you. If you read your materials, I'm the guy who got his voucher cut for billing his dog, my clients' dog out of the dog pound. I guess the first thing that I want to say is that I've been practicing on the CJA panel for twenty-six years. The first jury trial that I ever tried was the five and a half week long jury trial in front of a federal judge in Helena and I've been doing it ever since then. I yesterday sat back in the panel and listened to the testimony, in the afternoon went to my hotel room and I listened to the testimony by the live steam. I did the same thing this morning and this in my opinion is a way you can solve the remote detention issue and the attorney client communications problem that I'm going to tell you by giving you a little bit of background.

One time tried a case in Billings, it was a federal jury trial and I argued to the Ninth Circuit at the same time in Seattle. I was literally at the podium cross-examining the witness and ten minutes to ten the district judge said, "Counsel, we have to take a break." Turned over and looked at technical jury, "Ladies and gentlemen, we're going to take a little longer break than normal. It's going to be about forty-five, fifty minutes." I got up, grabbed my briefcase, walk across the hall and went to the bankruptcy court and right there on the monitor were three appellate judges, a panel of three judges in Seattle and I argued that appeal to these three appellate judges in Seattle and it was exactly as if I were in Seattle standing in a podium arguing a case to the Ninth Circuit Court of Appeals.

At the end of the case it was submitted, I went back to the district court, the witness got back on the stand and I continue to cross-examine that particular witness. This is the point, in Montana and I'm sure you've heard this testimony elsewhere. There are these huge distances, there is this remote detention issue. It creates problems with the attorney-client relationship. I'll get appointed, I'll drive 500, more than 500 miles to see a client and he's angry, he doesn't trust me, he's, this other lawyers they were trying to sell me downstream or whatever. We talk, we develop a relationship.

Then the next thing I know, "Hey, man you're not answering my, you're not taking my collect calls from the jail. When was the last time . . . I've only seen you once. I need to see you more often." The response will be, sorry, I was flying to Seattle because I have a Ninth Circuit on Tuesday which incidentally I did and then Tuesday afternoon I flew to Portland to attend this review Committee hearings and so I wasn't in the office to take yours and they're angry. They don't think that I'm doing my work, they don't trust me, they filed complaints with the district judge. They file

complaints with the state bar with disciplinary council because I'm not there.

I'm not there because the attorney-client, the ability to engage in these attorney-client meetings as Ms. Horwitz was just talking about, talk to your client, review discovery, can't happen or it's exceedingly difficult to happen. This is the solution. Like the time when I argued to the Ninth Circuit and tried the jury trial to the district court. We have the ability to engage in attorney-client meetings using technology. I heard Judge Rankin this morning talked about in the district of Wyoming they have a standalone computer in this jail cell where clients, where defendants or accused people can look at discovery. They get a CD, there might be things that are limitations. They can't print them out but they can look at it.

In the district of Montana we have a rule, a local rule that when a document is designated a sensitive material then it can only be reviewed in the presence of counsel. We can't give it to the client for him to review so that creates a huge problem in terms of talking about the weight of the evidence with the client that talks about the strength of the government's case or any potential legal or factual defenses that we might have because I got to drive 500 miles to see this guy. If we had a system and I do it all the time in my office. I have a computer here, a computer monitor here and I have one here and another one here. I can conduct a Skype conference with a client who is located in wherever, Maryland. I do a lot of court or federal claims with construction type cases.

I can talk to a guy using Skype on this monitor and then I can say, "Well, look at this doc- here's a contract." On the other monitor I'll have a PDF file, he can look at it, I can look at it and we can have a discussion about that and as Judge Rankin talked… was referring to in the district of Wyoming having a standalone computer in this jail cell. It seems to me that would be an easy fix for this remote detention issue. It would be an easy fix for this elevated travel hours that CJA counsel have. I, last night, Facetimed with my wife before I went to bed. All you got to do is have an app, develop and app so that you can send a client or they can communicate with you by email and you say, "Okay. I'm in court" or "I'm in meetings. We'll do a video conference tomorrow at 9:00." Or you can do it by cell phone.

I can file documents from my hotel room in the federal court. I can file motions. I can file briefs. I can submit an eVoucher. Why can't I have an attorney-client meeting using my laptop in my hotel room while I'm here in Portland and my client's locked up in Wyoming? This is the solution, I think that it's a problem that's created by the executive branch. The

executive branch through the U.S. Marshal Service decides to house these guys in Wyoming or in Shelby to save money. Why can't they cure . . . That creates the problem, why can't they cure the problem by creating a room where clients can meet with attorneys by video conference? You can email to them the document or send them a disc so that they can look at it, so that they can't print it out and show it around to the other inmates in the jail who the government cooperating witnesses are or whatever and you can have a substantive attorney-client meetings discussing the weight of the evidence, discussing the documents, discussing factual defenses, legal defenses and the problem that's created by this remote detention, this non-accessibility or inaccessibility goes away because you're available.

We have the technology, we should use it. That is my proposal for the solution to this particular problem, the remote detention issue. I think all you have to do is send a report back to the chief justice saying, "Why don't we do an RFP?" An RFP in construction language is a request for proposal. Why don't we send an RFP up to the IT firms and tell them to develop an app so that attorneys can do that. CJA counsels can do that. That's my suggestion.

Dr. Rucker: Thank you. Mr. Cahn, would you like to be in the questions?

Reuben Cahn: Thank you. Mr. Coan, let me start with you. You began . . . let me pull this a little closer because this doesn't pick up. Let me start with you, Mr. Coan. You began talking about the initial limit on experts, the $800 that you spend without getting permission and you talked about how that needed to be raised and I have a couple of questions for you about that one. Can you suggest an amount that you think would be adequate? Two, should we be considering different sets of initial limits for different types of experts? For instance, should we consider a much higher initial limit for investigators because it almost every case you're need to get an investigator going on your investigation, on interpreters or something like that. How would you recommend structuring this if you were going to change the statute?

Tom Coan: I think that the easiest way to do it would be to make that $800 limit applicable to each service provider. An investigator out here I think they're charging $65 an hour generally for investigators in the Portland area. That gives them ten, eleven hours which should be I think plenty of time to go ahead and get started on a case. If we get our authorization back from the court in a timely manner. It just . . .

Reuben Cahn: Can I ask you, what do you think of as timely? What?

Tom Coan: I think once we sent over to the Federal Defender's Office the turnaround over there should be within a day or two and we should have gotten our call back from the Federal Defender's Office within a feedback letting us know whether or not, and they do-do this, saying, "Tom, I'm not sure, you know, why do you need a 100 hours for this paralegal? Do you really need that much? If you do, you're going to have to put some more information about here, about the plan that, how you plan to use that person." I think that should come back within a couple of days.

Reuben Cahn: I would like to imagine for a moment that you don't practice in the district of Oregon and you practice some place where you are not likely to get any response in less than two weeks. What would be a reasonable limitation in that case?

Tom Coan: I'm thinking more of not on a limit as much as getting back . . .

Reuben Cahn: The initial authorization that you don't need to have approval for.

Tom Coan: Fifteen hundred dollars. I'm taking a stab in the air at this but I think what would be a better way to go about this is if we proceed on the assumption that this is a reasonable request and it will be approved, if it's not approved, we're not going to have to have a duty to tell that service provider, "Hey, hold off on any further work." I think that the danger of going too slowly is too great whereas if they did proceed without getting later authorization because somebody deemed it to be completely unreasonable then going over that amount probably hasn't gone over the $800 too much, unless you're talking a whole long time before you get information back about your authorization request.

Reuben Cahn: Pete, can I ask you the same questions? Do you have any thoughts about we ought to structure that initial authority to retain an expert?

Pete Schweda: I would say like $2000 for when you're talking about an investigator. I think it would be . . .

Reuben Cahn: Investigator, interpreter or sometimes you need a psychologist right away any of those.

Pete Schweda: I think $2000 would you give you enough to at least some of this, even a psychologist started looking at things and give you an initial impression.

Reuben Cahn: Ms. Nakaoka, same question for you.

Lori Nakaoka: I just really don't know that setting, any maximum or cap really solves the problem. I think the initial issue is whether or not we are all officers of the

court is whether you trust us to make in our judgment a good assessment of what our case needs in order to be defended properly. I know that sounds like I'm asking for the sun and the moon and the stars but I don't think that most or any really CJA panel attorneys take these cases with the hope of exploiting the system. We are trying to go a good job and we need the resources to do the job. The $800 cap is ridiculous and so that forces us to triage what we're going to do with the hope that we are making the right decision initially and knowing that we don't have the ease of access to the services. We have to run everything by the court.

I'm hesitant to set a number amount on it but certainly the $2500 that is the authorized cap before it goes to the … I agree with Mr. Coan, if it were $800 per service provider but I would bump it up $2500 per service provider, not expecting any attorney to use that in every case but just giving us the freedom to be able to use the services quickly and efficiently.

Reuben Cahn: Ms. Horwitz, can I put the same question to you and actually expand it a little bit because one of the things I think would be helpful for our record are some examples, and I may come back to the others . . . of your examples where the inability to get your expert going right away hampered your defense of a case. If both of you could give me an idea of what you, or what you think, might be a reasonable approach [to] this issue, as well as some examples of the problems the current limitation causes.

Jennifer Horwitz: I think also am lucky to practice in a district where we have a CJA administrator who helps us streamline our request and make sure before they go to the judge that they're persuasive requests and then advocates for us somewhat when the request gets to the judge and also make sure that it's turn-arounded in a timely fashion so I'm not sure I can think about a situation where I had such a long delay that it hampered my ability to proceed or represent the client well, but with that said it's a lot of busy work and extra work for us to keep going back to the court and applying for funding especially if we have a bunch of different issues going on in a case so my suggestion would be that they're not in aggregate amount that there be a set amount for each service provider and for providers like investigators, paralegals, interpreters it be in the neighborhood of $1500 or $1600 and that it be a higher amount for mental health providers, neuropsych people like that which are a lot of the experts that I end up bringing in to a case that's not going to trial.

Reuben Cahn: Mr. Hoovestal, I think you may be the one person who doesn't have a CJA panel administrator, is that right?

Palmer Hoovestal: That's correct.

Reuben Cahn: Tell me about your experience . . .

Palmer Hoovestal: What we typically do in our district I'm go and meet the client, I can see something is not right there and well it not amount to a competency defense of responsibility, I'll approach the court because I want diminish mental capacity evaluation but in our district that doesn't happen. What they typically do is say, "Well, why don't we just send him to Seattle to SEATAC here and he can have basically a competency evaluation conducted." I don't get the kind of evidence that I want for a sentencing purposes, like a diminished mental capacity so the question, I'm going to answer your question, I think it should be higher. At least $3500 that's what they charge. Why would we limit ourselves so that we have to go back to the court file another motion? Thirty-five hundred for a psychological evaluation minimum. I mean typically it's more than enough, five grand….

Reuben Cahn: You're saying you can't get that in most of your cases anyway . . .

Palmer Hoovestal: Yeah. In most of my cases that correct. In most of my cases they say let's just send them out to SEATAC, which I problematic in other ways because then you get a call from the evaluator in a couple of weeks and he wants information about why you requested it and so you have this discussion with the evaluator and you eventually end up seeing your comments in the report that goes to the court and so, you know that's inappropriate as well so I don't like the way the system at least in our district is held. I would like to be able to obtain my own psychologist for my own purpose so that I can use it at sentencing for example.

Reuben Cahn: What do you think of the idea of having a panel administrator who's part of or connected to the Federal Defender's Office?

Palmer Hoovestal: I can tell you that our Federal Defender's Office is excellent. They are extremely good lawyers. They are extremely good lawyers. They are extremely helpful. I can't think of a bad thing to say about them so if there was a panel administrator attached to our Federal Defender's Office I would have full faith and confidence to whatever it need to be. I know that they would do what they could to help us.

Reuben Cahn: Do I have time for another question? Ms. Nakaoka, I'd like to ask you something. Since making your initial statement that you want what federal defenders have for your clients and I understand you were speaking to resources but brought up in my mind something else in many ways when I think of what we have that's most special in our office it's two things. One, that we do nothing but practice federal criminal law seven days a

week; and two, that I have colleagues all around me who I can always go ask a question.

Now, the second is not really possible to replicate for private practitioners but the first we could provide if we were to shrink panels further and increase the number of appointments. What's your reaction to that idea?

Lori Nakaoka: I think it's a good idea. I think the number of appointments, if that number increased, it would necessarily increase the expertise of the attorneys getting those appointments, they'd be in federal court more frequently. I think the fewer panel attorneys I think it would also encourage more professional camaraderie because there are fewer attorneys doing the panel. They get to know each other. We don't have in Idaho a CJA administrator and we don't really . . . we're like most western states, we're spread out so not all of the panel attorneys know one another. We don't frequently see each other in court. I think the average appointment is I've heard, I don't know for a fact is four, three or four appointments per year. It may be more depending on which division you're in.

Not a lot of opportunities as you said for us to have the intellectual exchange that you have, the federal defenders. I know that would be a very unpopular decision for the local attorneys who do-do the CJA contract or you know on the panel because there's a wait list for the panel and they … a lot of people would like to be on it so to restrict the number would not be a popular decision oi think for the bar.

Reuben Cahn: You've got a sense of the national perspective on these things. What do you think about that idea?

Pete Schweda: About?

Reuben Cahn: Shrinking the panels to make panel lawyers essentially fulltime federal criminal practitioners.

Pete Schweda: I wouldn't say it would have to be fulltime but I think that they have to get at least five or six appointments a year. They're real appointments because I think it trains them. They have ongoing training in federal criminal practice. They become more efficient. There's an efficiency that would go along with it so you know having a full time practice and a CJA work would be fine but I think that the point you have to get to is what the Vera Study said which was five or six appointments a year as I recall and I think that's the point where you really get a benefit to the system or it becomes more efficient and more beneficial to the client and also to the judiciary.

Reuben Cahn: One last question for you and then I'll turn it over. How many appointments on average are you getting a year in your district right now?

Pete Schweda: It's varied. I have when Judge Petersen said they're giving two, I had to think I … right now I have three active cases and one that's on appeal so I think my experience has been a little bit more than two years. There's been years where we would get five, six, seven appointments but that's dropped in the recent years.

Reuben Cahn: Mr. Coan.

Tom Coan: Yeah. Thank you, Reuben . . . just to get back to your original question. One of the things that we do here, may be do it in other districts too which I've found does saves some money and some time. With respect to interpreters which we use quite a few of them, there are the Spanish speaking people here in the federal criminal system. We put in one request an authorization for $2000 for up to $2000. It doesn't necessarily have to go to the same interpreter because it's difficult to find an interpreter having the same schedule that you have and fitting in with it so we could use any interpreter who's available and they can all go off that one $2000 voucher which save us quite a bit of time in terms of reapplying for somebody new or trying to manage our schedule with a busy schedule of an interpreter.

As to panel size, we just did a review first time in four years here and just some natural attrition but there's some friction because I'm of the opinion that we should be getting a minimum of six significant appointments, trial level appointments. Not just supervised release violations or something like that. In order to keep up our expertise and our interest and motivation and enthusiasm for wanting to practice or at least work primarily in federal criminal court. There has been a reduction in filings here. It's been trending downward for the last three or four years I think and I don't know if that's going to continue but we've just added a number of people to the panel to get it back up to the same size as it was four years ago and I'm concerned that the number of appointments is going to drop and I think that could be a problem for morale amongst the panel members and for interest in wanting to be a panel member down the road but we will see.

Reuben Cahn: Thank you. Ms. Horwitz.

Jennifer Horwitz: I'm glad you asked for my feedback on this because I actually think we would be doing a disservice to our clients by having our panel members just do federal work and that isn't to say that our clients aren't being well served by the Federal Defender's Office who's doing that work fulltime but I think the sweet spot is a minimum of five to six cases a year to stay

proficient in federal practice but I actually have had the experience and I won't bore you all with the details unless you want to hear it but I've had the experience in a few cases of feeling like I had an extra edge in advocating for my client and getting the best possible result because not just of distant history with state practice but because I'm currently doing a state practice and I was able to bring that expertise and specific knowledge about how things work in state court, what the options would have been in state court to the table. I think that's a benefit that our clients can get if they have attorneys who are very proficient in federal practice but also know what's going on in the state system.

Reuben Cahn: Mr. Hoovestal, can you just touch upon that question?

Palmer Hoovestal: I have at a minimum ten cases that you've point at least per year . . .

Reuben Cahn: Ten?

Palmer Hoovestal: Yeah. In Montana, I don't know how much different we are. I think that the panel members that we regularly see unlike Idaho we do see each other in court a lot and we do discuss things. We have an annual meeting in terms of the number minimum, yeah I'd agree, six cases a year, big ones, cases that have the potential of going to trial, cases that might have a suppression issue or whatever rather than just the revocation of supervised release or something like that.

Reuben Cahn: Thank you.

Dr. Rucker: Mr. Frensley.

Chip Frensley: Ms. Horwitz, you addressed this issue about case maximums and I want to explore that a little bit with you and perhaps the rest of the panel as well because it's been alluded to in some of our previous hearings but I don't think we've really drilled down on it so I want to take the opportunity since you've highlighted it to talk to you a little bit about it. I guess let's start with the first question. From the panel or your perspective, what is the concern about hitting that case maximum so much more frequently now or sooner than what you might otherwise have done so?

Jennifer Horwitz: You mean why is the case maximum a problem for us and why do we want it higher?

Chip Frensley: Yeah.

Jennifer Horwitz: I think I practice in a district that I think is more supportive probably than other district when a lawyer does the work and goes over the maximum

and I think that often, those vouchers are approved but I think it sends the wrong message to the court to the lawyers and there's a real parity issue with creating a limit like that and I actually in trying to do my homework to be prepared for today, I actually tried to figure out where this number comes from and I understand the number keeps changing as the hourly rate keeps changing to keep step with about seventy-seven to seventy-eight hours but who decided that was enough? I couldn't figure out the answer to that question.

I made calls to certain people that I was told might have the answer and calls to D.C. and I just . . . unless somebody can explain to me that there's data to support that in most cases that's enough time or that's on par with what the government is spending prosecuting these cases. I think it really sends the wrong message to have to justify myself especially as a system is set up now to the trial judge why I had to go above that amount. To me, it's just, it's a way of communicating to all of us, our clients, the lawyers, the judges that these cases don't deserve more than two weeks of full-time work.

Chip Frensley: The consequence or one of the consequences at least of hitting the max is that then you have to go to the circuit. Can you talk a little bit about what concerns that raises in terms of both that justification you're talking about, the ability or perception of the ability of a circuit level person to evaluate that work and then the time associated with the delay and the processing resulting in that?

Jennifer Horwitz: We're also lucky because we do eVoucher and that has sped that process up even when the bills goes to the circuit considerably but we're already in a situation, I think we've got a great bench. I have a lot of respect for our judges but we're in a situation even at the district level and I know you asked about the circuit level but even at the district level where the person trying to evaluate whether the time that we spent was reasonable, these are people who we have a judge who never practiced criminal law and became a judge. We have several judges who were government attorneys for their whole careers and weren't in private practice and don't know what the time it takes to run a business, the kind of overhead you're paying, all of that stuff.

It's even more removed when it goes to the circuit and then the circuit really doesn't know what you've done other than what's in the bill and one of the things we're trying to do is give our lawyers more information about how to explain their bills more and better and all of that. It's simply a hardship, the delay, the extra work in justifying it but again, I'm lucky in that I practice in a district where and I looked into this before coming

today, we haven't had many cuts at the circuit level when it goes up but you've got to wait longer to get paid.

Chip Frensley: You identified the concerns and issues so now, let's assume for a minute that the statute didn't exist, that those requirements weren't there and let's try to build it, okay? With that backdrop and your experiences, I guess my first question would be would you have a point at which there would be some sort of review of a voucher beyond a district level review. In other words, would there be some threshold at which okay, well, now, it has to go to somebody other than the district level to make the decision? This is like voir dire. There's no right or wrong answer. I just want to know your answer.

Jennifer Horwitz: Right. The reason I'm making that face is that it's . . . you're also asking well, where this function even belong because your question assumes that it stays with the court and that the circuit level is the review.

Chip Frensley: Sure. That's a really good point. Yeah. I'm going to ask . . . in fact, we'll get to that question as well. I do want to focus on this cap issue because that's, again, it's an issue that's come up specific in your testimony that we really haven't talked a lot about as a Committee. Let's set aside for a minute and it's a very important question, something the Committee is very interested in whether or not it stays within the judiciary but again, let's look at this excess issue and so, is there a number at which you think that it would be appropriate for there to be some level of review above a threshold review?

Jennifer Horwitz: I do, but I can't give you the number because I don't have the data. I can tell you what I'd want to know. I'd want to know . . . I'd want information like what I brought to you today and more from each district. How many, what percentage of vouchers are going to the circuit and so therefore are over the current amount? I would also . . . I know this is very hard to figure out how to come up with a number but parity is important, what is the government spending on these cases and those are the two main things that I would want to know in order to set a number.

Chip Frensley: If I remember correctly, didn't you say it was about 23% of the cases that go to the circuit?

Jennifer Horwitz: In the last fiscal year in my district.

Chip Frensley: Okay. Do you think that 23% number is right or do you think it should be something less than that that should be having additional review or does that inform you at all?

Jennifer Horwitz: People may disagree with me but to me, 23% is a big number for the exception. That's not necessarily a number where you have the exception swallowing the rule but to me, an exception is 5%, 10% and as a district, we were at 23% and I consider myself a conservative biller with no voucher disputes other than one where the judge said, "I just don't want to pay you. I think you did the work but your law partner was on a form of trial and I just don't want to pay you." Thirty-three percent, that's a third in my own history that's the exception approaching swallowing the rule.

Chip Frensley: You think it's somewhere 5% to 10% as the sweet spot for where there might be another look that needs to be had. Does anybody else on the panel have any thoughts about that issue?

Pete Schweda: I would do the paradigm shift where the, get it out of the judiciary and even attorneys that are hired by the district or the circuit get it into the Federal Defender's Office or get some other mechanism because what you would be able to do in that circumstance is you, I think an attorney would be very free to discuss the case with that person and there could be a dialogue that could be beneficial to the economy of the case as well as to the benefit of your client.

Chip Frensley: Let's assume that were to happen. Assume that the judge were totally out and we've adopt this "Pete Schweda Model" and it goes to an employee, the defender's office. Would there ever in that situation be a situation where there would be an additional layer review above that party right there?

Pete Schweda: I think that the additional level of review would be if the panel attorney felt that they weren't being treated fairly. I think that's the only time that you would have the additional level of review and as to the amount, I think that you should determine somehow what the average cost of the case is and then when you exceed the average or some percentage above the average, that's when you have to have some serious approval from whoever is looking at the vouchers and determining what should be paid.

Tom Coan: Chip, if I may, as I think about that, it seems as though every bill that I've had has gone into review has been approved. Practically, every other one that I know of for attorneys in Oregon have been approved when it's gone on to that second level so the only thing that's done is delayed our payment and that's a problem. It's one of the biggest complaints that I have from panel members in Oregon. We don't have many but I hear about that, the delay in payment.

We all have bills to pay. We've got rent. We've got mortgages. We've got kids in college. People want their money but don't want to wait three

months for it. We don't get interest earned on it. If they're going to really deny, it sounds like from what I know a very small percentage of those that go to review, why don't we look at the cap of where they're really cutting? Which ones are they disapproving and then use that as the cap for cases because those are the ones that are in serious trouble?

Chip Frensley: Anybody else have any thoughts on that issue?

Palmer Hoovestal: Just very briefly, in the testimony earlier this morning, the question was asked, well, does anybody travel's time and I'm going back to this remote detention issue. Does anybody's travel time ever been cut? No, it hasn't. What it tends to do is approach to the case maximum more quickly. Then, what we have to do is file a motion to designate the cases complex or it's extended for whatever reason and I'm not really sure what happens during the review process.

My personal assumption was always it goes to a law clerk and the law clerk takes a look at it and the law clerk makes the determination, writes the memo to the judge and then the judge, I don't know what happens. That's what I think happens. I don't honestly know what exactly does happen. At the appellate level, I don't think . . . I've never had a problem. It's always been at the circuit level, it's always been approved.

Chip Frensley: The appellate level is like that beer at the restaurant last night called the abyss. Yeah. Sorry, Ms. Horwitz.

Jennifer Horwitz: I just wanted to add one piece of information to my answer to your question which is we review a third of our panel every year in a process that the standing committee engages in and provides a report to the court and one of the things that the court wants to know about the attorneys that are under review is how often their bills exceeded the statutory maximum.

Dr. Rucker: I'd like to follow up on that if I may before I turn it over to Judge Cardone. Are any of you doing any self-cutting so that as you're approaching the maximum, you decide not to go over the maximum so that you won't have to go up to the circuit and you can get paid more quickly?

Palmer Hoovestal: Yeah. I've done it a lot of times. If it's only $500 bucks or even a thousand just to get paid, I'll cut my voucher and I've had vouchers delayed for six months.

Dr. Rucker: Because they went up to the circuit or they just . . .

Palmer Hoovestal: No.

Male: District court?

Palmer Hoovestal: Right.

Dr. Rucker: Just district. Okay.

Lori Nakaoka: I think from the district of Idaho, anecdotally, I think every attorney, every CJA attorney I've spoken to has cut something at some time or another for reasons getting paid more quickly or feeling that maybe it wasn't justified. I heard testimony this morning or was it last, yesterday where attorneys were doing things that they, the court won't allow so they just cut it. They still do the service but they cut it. I think that I'm confident across the board that we all cut our hours.

Dr. Rucker: Is that really a function, then you just get paid sooner and not to have to be delayed or do you think that you would be cut?

Lori Nakaoka: No. I think it's a combination of things. One, yeah, you don't want to have it any longer delayed than you are already experiencing especially if you haven't already filed a motion for interim payment. Also again, it's this tug of war of wanting to do service for the courts and not appear to be over billing. I think it's just a combination of pressures which weigh the scale towards encouraging not expressly but encouraging the attorneys to meet those maximums. That's why there's some maximum. You're telling the attorney what that case should be completed in terms of hours.

Dr. Rucker: Thank you. Judge Cardone.

Judge Cardone: I have a question for Ms. Horwitz. Ms. Horwitz, I've heard you quoting data about the number of cases and how many went up that were excess et cetera and one my questions for you is where did you get that data?

Jennifer Horwitz: I got it from Natalie Harmon, our CJA administrator. I asked her if she would get those numbers for me.

Judge Cardone: Are you on eVoucher?

Jennifer Horwitz: Yes.

Judge Cardone: Is it your understanding she got them from eVoucher or does she keep them separately?

Jennifer Horwitz: I'm trying to think if I . . . what discussion we had about how she got those numbers. I think that she said she was going to use eVoucher to create that data but I'm not exactly sure like what search she ran. What she said to me

is in the last fiscal year, these are the number of CJA 20s and 30s and this is how many went up to the circuit.

Judge Cardone: Approximately how long did it take her to get those numbers for you?

Jennifer Horwitz: That I don't know. What I can tell you is we had a meeting where I asked her a number of questions and she said to me I'm going to get you this data and I said, "If any of these is a big burden on you, don't do it. Just get back to me and tell me you can't do it. It's going to take too long." We didn't define what amount of time that was.

Judge Cardone: From the time you asked for it till the time you got it was approximately how long I guess is the . . .

Jennifer Horwitz: I think it was two days.

Judge Cardone: The next question [CROSSTALK AND LAUGHING] . . . you have no idea …

Reuben Cahn: I can see your blood pressure rising, Judge!

Judge Cardone: The reason we're all laughing is we can get no data. Along those same lines when we're talking about eVoucher, a question for all of you because I heard you, a couple of you mentioned about getting, about this whole issue of the vouchers and how much is the $9700 is, it has got up to the circuit and it should be raised and then you said, I believe Ms. Horwitz and I think Mr. Schweda talked about it's a function of figuring out I think what you said kind of as, what I heard maybe what you said and what I heard are two different things, but it raised the flag in my mind is the average cost of a case.

I have heard . . . the Committee has heard some concerns about gathering that kind of data, the issue of will eVoucher allow for this gathering of what should the average case cost and we're not going to let people go above this . . . why are you billing above that average cost? A two-fold question and I'll start with you, Mr. Schweda. If there has to be some way to figure that out, is eVoucher the appropriate way to do that? Should there be a function of averaging a case and then sort of using that as a measure of what a case should cost and I think you've answered this but in whose hands should that be?

Pete Schweda: Pardon. The last part.

Judge Cardone: Whose hands should that be and why?

Pete Schweda: Again, it shouldn't be in the court's hands. It should be either in the Federal Defender's Office because you can have a . . . the problem with doing, you would never want to do it to the judge and that's the system that we have now. I don't think it's fair to do it to the judges' employee because the, if the judge ask or maybe the employee goes and tells the judge, I'm getting this kind of questions, I think that it should be a confidential frank discussion with someone that the attorney can trust either someone in the Federal Defender's Office or develop some other kind of a system where we have an independent function and I did not mean to imply that we should have benchmarks for cases. What I meant to imply is that when it becomes beyond the average case, then we should start having discussions about what do you need, why are you doing this? So that it can be justified and there can be some reason for doing it.

I certainly didn't want to, this Committee to think that we should develop average cases and that those should become benchmarks for if you do a first robbery, this is what a robbery cost and you shouldn't go above what a robbery cost.

Judge Cardone: Good. I guess I still don't understand your answer because I thought you just said if it goes above a certain amount, then we should start asking these questions. What are you saying there?

Pete Schweda: It's different between saying I think there are some circuits that I've heard where if you have a guilty plea, you never get over the case maximum. They don't allow it in any way, shape or form. What I'm saying is that when you get to the average case cost, that's when question should be at. That's when you should go ask for permission and say this is the kind of case I've got and these are the reasons why I'm going over the average cost.

Judge Cardone: Anyone else? Ms. Horwitz, any thoughts about using eVoucher for that or getting data from eVoucher and who should have that data and how should it be used?

Jennifer Horwitz: I wish I knew more about what kind of data mining you can do through eVoucher and I don't . . .

Judge Cardone: Let's imagine you can do all kinds of data mining. Who should do it and how should it be used?

Jennifer Horwitz: I mean I feel comfortable with the way things are in our district that we have a CJA administrator who's part of the Federal Defender's Office. The way things are organized in our district, I would suggest that she be the one to do it.

Judge Cardone: Should the judiciary play any role in any of that especially as it goes up to budgets that go over certain amount or go up to the circuit level? Should all of these data right now the AO is the one that's issuing out the eVoucher system? Should that all be gathered at the administrative office? Any thoughts about where all of this should be held?

Jennifer Horwitz: Are you asking in terms of the Committee's efforts to get a hold of this data and make decisions based on it?

Judge Cardone: No. I'm talking about . . . we're talking a structure. Some point, we're going to make a recommendation this is the structure and right now, it's in the judiciary at the administrative office and so things like eVoucher which affects CJA panel attorneys, there's data.

Jennifer Horwitz: No. I would take that out of the judicial function completely including at a level of review.

Judge Cardone: Where does that data go? Who should be able to hold that data and know what it cost for you to do a case and be able to work those numbers like you did?

Jennifer Horwitz: The CJA administrator who I think belongs under the umbrella of the Federal Defender's Office.

Judge Cardone: How about national data?

Jennifer Horwitz: That raises a bigger issue that I'm sure you don't want me spending a lot of time talking about but I think there should be a CJA administrator in every district. They should be having conferences and there should be somebody who's in leadership nationally.

Judge Cardone: For the CJA attorneys separately?

Jennifer Horwitz: I think there should be like just like the CJA panel reps have conferences and the Federal Defender's Office have conferences. I think in every district, there should be a CJA administrator. They should have conferences and there should be a leadership structure within that entity.

Lori Nakaoka: Can I add to that? I read that there was a sort of temporary study or test case where CJA supervisors were created. I think that that would be a great solution for the west if we had regional CJA supervisors who were familiar with the culture of the various regions and the needs of those regions. They could act as the voucher-reviewing entity rather than the courts. They would have a better sense of what local cases require in terms

of defending. They would be the buffer between the attorneys and the government so to speak.

I just think that that's something that's needed and then the idea of using eVoucher data to try to determine what should be the appropriate amount to spend on a case, I think that assumes that the data is reliable and I think if you take into consideration the fact that the attorneys are cutting their own hours, you're going to under estimate what a case takes to defend.

Judge Cardone: Can I ask you a question? If you have these CJA supervisors if that were the structure, we would have recommend, who would appoint the CJA supervisor? How would you . . . would you elect them? Where would that person come from?

Lori Nakaoka: It's a good question. I haven't really thought about it. The CJA rep though, I'm not even sure how the CJA rep is selected. I don't know . . .

Judge Cardone: Let's assume the judge selects the CJA rep? Wouldn't that put you just back in the position of the judge sort of having a say in making policy about how you get paid and how much you get paid?

Lori Nakaoka: Yes. If the judge alone selected the rep but if it were a committee, a selection committee, just like it's a selection committee to select the panel reps, that's comprised of representative from different entities, federal defender, the CJA rep, the district court judges then maybe, it would be much more neutral.

Judge Cardone: Mr. Hoovestal.

Palmer Hoovestal: Here's an idea and it's based on the concept of the Fifth Amendment and the Sixth Amendment. If the function of defense counsel is to provide, assure that due process is provided and to provide the effective assistance of justice, I mean of counsel, those are two concepts based in justice, why not put it in the Justice Department in the separate but equal position as to the Attorney General? Defense attorney general, for example, somebody who would be in the Justice Department who would be like in Montana our Attorney General Mike Cotter that have his whole equal part just like Mike Cotter but had defense counsel there. That's an idea based on …

There's no Sixth Amendment right to an effective prosecution. There is a Sixth Amendment right to the effective assistance to counsel. Conceptually, the Department of Justice, separate but equal to the Attorney General.

Judge Cardone: Thank you.

Dr. Rucker: Judge Gerrard.

Judge Gerrard: Yeah. I want to drill down just a couple of areas and I'll start with you, Ms. Nakaoka. I was also struck like Reuben was by your comment that those are being represented by CJA panel that you wish you had what the Federal Public Defender's had and I do want to ask you about that. Is it a matter of resources? Is it a matter of timely resources? Is it a matter of lack of camaraderie or somebody being able to … I'm just going to ask you open ended. What is it that's like?

Lori Nakaoka: I think my main thrust and it's all of what you just said but main thrust was the resources, the support staff. If I were a federal defender and I had an appointment, I could walk into my office, call my investigator right then and there, give him a worksheet. I could call . . .

Judge Gerrard: I'm going to stop there. Why can't you get an investigator or is it that you can't get him in time?

Lori Nakaoka: I can, but my investigator if he's available, you know he's a private investigator so I have to be sure that he's available to work on my case. I have to be sure that he's available and will accept the rate that the court is willing to pay him. I have to be sure that he's going to use . . . he's not going to use up his $800 in just reviewing the discovery so that I don't actually get the investigative work done and that's not to say that I can't file the motion and get the extra money to get him going but I cannot just literally walk into my office and say, "Hey, Joe. Come on over here and let's get going on this case."

I don't know if you can do that in the Federal Defender's Office but I imagine it's that way. I think it can be that way. It's that kind of ease with which I can access the resources. I remember I got a call last year from the Federal Defender's Office from their mitigation specialist who was prepping the codefendant for case a we're sentencing and I thought, "Dang, I wish I had a mitigation specialist," who would take over all of the client family interviews, this, that and the other. I enjoy that part of my job very much. I don't know that I would necessary hand it off.

There are times when it would be great just to have full time paralegals, full time investigators, who are available 24/7 so I hear. That kind of ease would certainly make my job much easier. Instead, I'm typing up my declaration to request funds and trying to justify what I need them for and I would rather not have to do that.

Judge Gerrard: Do you think it would be helpful to have a system in which you'd have a panel administrator that would assist you in that? Many of the things that

you've talked about and looked over to Mr. Coan and indeed Mr. Coan has access to an investigator, has access to mitigation experts, I assume. Is that correct?

Tom Coan: The same access that Ms. Nakaoka has I've also got to contact the investigator to see if they're available and good investigators, private investigators were in high demand. The good ones are usually overworked. It's difficult sometimes to get their attention onto your case.

Judge Gerrard: The resource issue is both resource and a timing issue?

Tom Coan: Right.

Judge Gerrard: To have it done. Okay. All right. The other thing that struck me, Ms. Nakaoka in your testimony was the mentality of keeping fees down and I want to know where is that from? Where is the perception from? Would it be within the judiciary? Is it within the culture? Where does that perception come from?

Lori Nakaoka: I can't speak for other districts and before I came here to testify, I did speak with some of the other CJA panel attorneys and not all of them, not nearly a majority of them, but in the, the members I did speak with, they all articulated the same concern that there is an inherent pressure to keep fees down. One attorney did have her fees cut considerably and this was post-conviction case.

That's harsh. She was working her case the best she could to the best of her ability. She's a good attorney. I know her. She basically essentially donated her work. This brings me back to this feeling that the sentiment that somehow we are not entitled or should not be entitled to these resources that we should somehow our clients need to ask permission to get access to what they should have just free access to.

Then there is a worry I think in my state particularly where there's a waiting list to get on the panel. I think some attorneys are worried. They will be cut from the panel if they consistently exceed the statutory maximum and that . . .

Judge Gerrard: By the judge I'm assuming?

Lori Nakaoka: By the selection committee. The judiciary is part of that committee. Those are concerns I think that we could just alleviate by getting judiciary out of the . . .

Judge Gerrard: Can I ask one more question which leads to independence and I think Chip affectionately referred to it as the Pete Schweda model of independence, maybe Schweda-Horwitz after hearing the testimony today. I do want to talk about it because really, what we've heard over several of the sessions particularly the last two day is independence but not too much independence and I guess I would want to see what the Schweda-Horwitz model would be.

In other words, what I'm hearing is things like the selection of the panel, the appointment, the voucher would be outside of the purview of the judiciary and yet there would maybe a separate entity that would be within the budgeting purview or under the umbrella at least of the judiciary budget. Is that what I'm hearing? What would the model look like if you could build it today?

Pete Schweda: You would have a board of directors that wouldn't be beholden to the executive committee or the budget committee or the judicial conference.

Judge Gerrard: Who would they fall under?

Pete Schweda: They would be on their own just like the sentencing commission is and the FJC is. They would their own discrete budget. I think that they need this to support the judiciary. I don't see this umbrella organization being outside of the judiciary. I see it being part of the judiciary. I would recommend the judges be a members of the committee not necessarily all of the members of the committee but that they lose the influence of the other parts of the judiciary that is looking out for the judiciary's budget because I think what you get now is even if the judges understand, it's not a zero-sum game that every entity's going to be treated differently.

I still see competition between the entities within the judiciary competing for a piece of the pie so to speak and they want to make their pieces bigger and the pieces they're not interested, smaller and so I think . . .

Judge Gerrard: In other words, if Congress has authorized to a rate of $144 to $148 an hour, that type of commission, that type of entity would be outside of the competing interest.

Pete Schweda: Correct and they would make the recommendation to Congress to fully fund the statutory authorized rate.

Judge Gerrard: Ms. Horwitz, do you have anything to add?

Jennifer Horwitz: No. I think like I said in terms of review of vouchers and things like that, I think that could be a function that our CJA administrator and her staff

does but there would have to be a way of giving the Federal Defender's Office, she's under their umbrella credit so that there were really resources within that office to handle that function because in preparing for this hearing and sitting down and talking to her, basically what she said is, "Well, we could do that but we would need the resources." Right now, the way the Federal Defender's Office is looked at and funded is on a case load basis so there would have to be a way of giving their office credit for doing that work.

Judge Gerrard: Thanks, Dr. Rucker.

Dr. Rucker: Thank you. Judge Fischer.

Judge Fischer: All right. Just one quick question and Ms. Horwitz mentioned this a bit. As you probably all know, Volume 7A of the Guide to Judiciary Policy generally talks about end of the case billing as the best way to determine reasonableness with some opportunities for interim billing with a suggestion of a 20% hold back. Ms. Horwitz, you mentioned monthly billing should be the norm. I'd like to ask each of you to tell me what the norm is in your district and we've got some overlap here whether you think end of the case is okay or should there be a monthly or now quarterly, in my district and whether there's a whole backing up? Mr. Coan, could you start?

Tom Coan: Thank you, Judge. I don't know if there is norm. I've talked to a number of different attorneys, some due bill monthly or quarterly. Some when they see that their account, their operating account is running down and they time it ahead for that or at the end of the case.

Judge Fischer: You bill whenever you want? There's no district rule?

Tom Coan: There's no district rule, not that I know off. Needs to be a final bill, needs to be and I think it's within forty-five days at the end of the case and nobody's had a problem with that. The idea of the 20% hold back though really bothers me because for an attorney to put in a lot of time and effort and to have that question mark whether or not his efforts or extra efforts or his or her efforts, extra efforts, might be compensated is it's real drag on morale. We're in a tough job here as Ms. Nakaoka I think pointed out the difficulty that we have with gaining the trust of our clients, the problems that they have, the abuse issues that typically come with many of our clients, the drug and alcohol abuse, the difficulty that many have had, them have understanding concepts that we're trying to explain to them.

This is tough work. To have that question mark hanging in the back of our heads for the entire case especially if it's a long case, it's going to take a

year or two to get resolved I think is a bad idea. If the court has a problem, I think especially now with eVoucher, they're following you and they have the ability to track you as you're going along on a daily basis. Somebody can have access to that information because we're putting it into the Cloud somewhere.

Judge Fischer: Only if you release it. Not until you release it, right?

Dr. Rucker: That's correct.

Judge Gerrard: Yeah. Until you submit it.

Judge Fischer: So, no.

Tom Coan: It's going into the Cloud. Perhaps, there should be a point where at a certain point, they want to question you where you go with this case kind of a case budgeting thing so that you get approval so that you're not having the question mark that what you might be doing could be pulled back at a later time because it's going to really be bad for the morale of all the CJA attorneys.

Judge Fischer: Mr. Schweda.

Pete Schweda: We in Eastern Washington, we can bill whenever we want. We are required to when we know that the case is going to go over the statutory maximum we're required to project what the full case is going to cost and fill out a CJA 26 that does go to the circuit to be approved and since they've instituted that rule, I have never had one come back for the full amount. It's always been reduced. I don't know that in the end that it's caused a problem. I know in one of the cases not on my voucher but on two other vouchers that's causing a problem right now for the attorneys. That's what we do in Eastern.

Judge Fischer: When you say reduce, the budget itself was reduced not the time that have already been put in? They're two different . . .

Pete Schweda: Correct. For example, if the court authorized . . . we asked for thirty-five. We were authorized for twenty-five. We billed 30. Then, now the problem is for these two attorneys is justifying the difference between twenty-five and thirty.

Judge Fischer: Ms. Nakaoka, do you have a thought?

Lori Nakaoka: Similar to the Eastern district in Washington, we don't have a directive on when to bill. If we are going to ask for interim payments, we do need to

file the CJA form and we do need to anticipate, my understanding and I do this is that we need to anticipate the full cost of the case to get that pre-authorized like Mr. Schweda. As for what practitioners do in Idaho, I don't now across the board. I know in my office where it's a tiny little office and the cases usually run approximately eight months or longer and so we ordinarily are standard practices to do interim payment so bi-month or every other month.

Judge Fischer: Ms. Horwitz, you mentioned it originally what's the practice?

Jennifer Horwitz: In my district, the norm is billing at the end of the case unless the case is complex and extended and you've been approved for interim billing which from what I understand from our CJA administrator is almost always approved. In my district, most of the CJA panel attorneys are solo practitioners or in very small practices and so when your case goes for a year or two years and you've plowed a lot of time into it and you have a bunch of cases like that, you can run into some real cash flow problems.

That's why when we discussed it among our panel members, there were some suggestions that the norm be monthly billing and I too find the withholding of the 20% for interim billing problematic especially in my district where the circuit either always or almost always from what I understand approves the bill. There have been no instances from what I understand from our CJA administrator of suspected billing fraud on the part of our panel members.

Then the last fiscal year, only five of the 600 attorney vouchers were referred to our standing committee for review. In other words, there was a dispute between the judge and the attorney. In other words, we have integrity in billing in my district and so the question is why is 20% being withheld?

Judge Fischer: Mr. Hoovestal.

Palmer Hoovestal: In Montana, we bill at the end of the case. There was one occasion where recently where that we went to trial, jury hung, and so I, the government was going to retry him so I asked for interim compensation on that case and it was denied. My sense was reading the order for the denial was that it's too unwieldy. It's got to go to the circuit. We got to withhold 20% and we can just wait until the end of the case.

Judge Fischer: Thank you.

Dr. Rucker: Ms. Roe.

Katherian Roe: Thank you. Where to start? Ms. Horwitz, I'm going to start with you and maybe stay with you because I definitely have a few questions I want to ask you. You said a few minutes ago that when you are up for reappointments to the panel, that one of the questions that's asked, not you personally but anyone who's a member of your panel, that one of the questions that is asked is how many cases have you had above the statutory maximum.

Jennifer Horwitz: That's correct.

Katherian Roe: When I was reviewing . . . let me start with that. Do you think that one of the reasons they asked that question is to determine whether or not the person bills outside of the ordinary bill? If their bills are too high.

Jennifer Horwitz: Yes. I think . . .

Dr. Rucker: Could you please into the mic, please?

Jennifer Horwitz: Sorry. Yes. I think that there . . . one of the factors that they're trying to look at in . . . we don't have a process of reapplication but a third of our panel is to be reviewed every so often I think it might be every three years. I think one of the things that particularly the judiciary wants to know is do we have chronic excess billers. If there's a discussion about the panel getting smaller, I think the judiciary wants to know who those people are to inform that discussion.

Katherian Roe: If you were a person who had four cases, let's say six cases during your term and three of those cases were over the statutory maximum that would be a person who they might consider to be a chronic over biller?

Jennifer Horwitz: I don't know. I'm new to this role as panel representative so I haven't historically been part of these conversations yet but . . . I don't know if three out of four cases would trigger it or I know that there's somebody on the panel that has been on the panel for twenty years and 99% of that person's cases are over the statutory maximum. I don't know what the threshold is where it becomes a concern. I don't know that yet because I don't think I've been part enough of those conversations but I'm not sure why that needs to be part of the calculus at all.

Katherian Roe: Would it be fair to say that it seems to be a negative connotation if you bill over the statutory maximum?

Jennifer Horwitz: That's my take on the situation and I also feel even in a district where we have so much support from our administrator, from our Federal Defender's Office, a bench that understands what we're trying to

accomplish and all of that I still find myself really looking critically at my own bills and saying is the integrity of my billing going to be questioned or be an issue if I bill for this time and sort of the judge inside my head is having some input into the way I do my bills.

Katherian Roe: I think someone said earlier, there's a subtle pressure. Is that fair to say?

Jennifer Horwitz: Yeah.

Katherian Roe: Subtle pressure to try and make sure that yours isn't one of the vouchers that gets pulled aside for further scrutiny because it's above that limit.

Jennifer Horwitz: Yes. Absolutely. In fact, I've made it a practice every time that I submit a bill in excess of the statutory maximum that when I submit a declaration in support of that bill that there's a section about what I did to try to minimize cost in the case and what time I decided not to bill for because I really feel pressured to make sure that the integrity of my billing is not in question and that it seems more than fair to the court.

Katherian Roe: Let me ask you this. That's a good point, the integrity of the billing because one of the things you just said a minute ago was only five or six bills have gone to the standing committee, I don't know if it's in the last year.

Jennifer Horwitz: In the last fiscal year.

Katherian Roe: You said that's because we have integrity in our billing so it seems to me that you're buying into that also that if it's over the statutory maximum or if it's questioned, that's because there must be some question about the integrity of the bill.

Jennifer Horwitz: I agree. I think that I am buying into it to some extent and I'm not alone because I think we all feel not withstanding that a lot of these vouchers ultimately get approved, we get questions. Our CJA administrator gets questions. We're under the microscope.

Katherian Roe: I'm also going to note that in your statement, it was clear that you had gone to folks, your fellow panel members and talk to them about bills that had been cut, vouchers that have been cut and I'm just going to just raise a couple of the reasons that you put in your statement. It says the work was reported to billing disparities between co-counsel and the same case so obviously if we're in the same case that I have one of the defendants and you have another, my bill is different than yours so that's something that was questioned or a reason for a cut, right?

Jennifer Horwitz: Right. That didn't necessarily mean that the work wasn't done by one or the other. A lot of it had to do with the fact that somebody, one person was a much better time keeper than the other person.

Katherian Roe: One person could have been keeping time for everything that they were doing. The other person was not and yet when the court looked at it, they said, "All right. Well, Ms. Horwitz, you only billed $10,000 and Ms. Roe billed $15,000 so we're going to cut her." They're going to cut my bill.

Jennifer Horwitz: Right. That has happened in my district.

Katherian Roe: I think you would probably agree with me that that's not really an integrity issue, that's an issue of the judge deciding that they were going to choose the bill that was lower.

Jennifer Horwitz: Right. That somebody was a better time keeper did not, that person was going to be dragged down by the person who wasn't as good a time keeper.

Katherian Roe: Let's see. I kept really good records and my bills $15,000 and you were sloppy so you should be the one who gets punished, right?

Jennifer Horwitz: Right.

Katherian Roe: You have my bill but we're not going to push yours up to the fifteen. I would imagine that hasn't happened in your district.

Jennifer Horwitz: Right. We're trying to educate our attorneys that it's not just yourself on the line. When you have co-counsel, the judges are going to be looking at all the bills and seeing how they line up and if it makes sense to them.

Katherian Roe: There are other situations where people told you about where . . . I think it may have been yours too, your situation where the judge just said, "I'm just not going to pay that much for this widget, if you will, for this defense. I'm just not paying that much." Good job, right?

Jennifer Horwitz: That's correct and the judge actually said I expect you to do pro bono work. That's just something that attorneys should do. That's the only dispute that I've had in my tenure on the panel and I took it to our standing committee and one of the things I did was I showed what pro bono work I do on federal cases and other cases but to have me do the work and then at the end, say, actually you're not going to get paid, I expect you to donate this time. I just wonder how the judge would feel if we said, "You know what, we're just going to dock your pay month because this is a public service that you should do for free one month out of the year."

Katherian Roe: Let me ask you another question and that's about the standing committee. You also told us about the standing committee especially in your statement and my question is when the bill is disputed or a voucher is disputed by a judge and the judge is going to cut it and it goes to the standing committee and the standing committee reviews it, the dispute if you will, between the judge and the attorney. How does that usually come out?

Jennifer Horwitz: What is the outcome?

Katherian Roe: Yes.

Jennifer Horwitz: I've been on the standing committee for a year since I began to be the panel rep so I don't have again a huge amount of experience. I did ask our CJA administrator how successful is that process at mediating dispute and she said very successful but I haven't done like a survey of our panel and said, "Hey, how satisfied are you all with this process that we have?" That's a question I would like to ask.

I can tell you we're in the middle or we just finished reviewing a voucher that was referred to the standing committee and it was a pretty exhaustive process where we went to the attorney and asked some questions. We went to the judge and really tried to get more clear on the judge's concerns and went back to the attorney and then we took a position and I think we've just submitted that to the judge and we're waiting to hear what the judge's response is.

Katherian Roe: Do you know if there are actually records kept as to how the disputes end? Some of the money is placed back in the voucher or the full cut goes forward. Do you know if there's any statistical data?

Jennifer Horwitz: I'm sure that our administrator, because there aren't that many disputes each year, I'm sure she could pull that together but I don't know what the numbers are.

Katherian Roe: Just one question. Sorry. There aren't that many disputes. Does that mean that a person would have to choose to go to the next level if they were to cut your bill and you would just say, "Okay. I'm going to just accept that. I'm not going to go to the standing committee." That just doesn't go any further, correct?

Jennifer Horwitz: Right, unless the judge referred it to the standing committee first. Either the judge or the attorney when there's a dispute about the bill can refer to the standing committee.

Katherian Roe: Thank you.

Dr. Rucker: Professor Gould.

Prof. Gould: We have time for one last question?

Dr. Rucker: Yes.

Prof. Gould: Wonderful. Thank you.

Tom Coan: Pardon me. Sorry. If I may. I got called to an emergency hearing down the fifteenth floor. I've got to leave in a couple of minutes so I'll be happy to just stick around for a few minutes but . . .

Prof. Gould: One question and actually, we have to stop at 4:00 anyhow. One of the things that I'm impressed by with these panels the use a data and in fact the Committee has some data before it looking at the percentage of representations in which the court gives the attorney an expert professional services. In your five districts, that rate varies from a high of 54% to a low of 8%. This is the percentage of representations, panel representations where you or your colleagues are getting a professional service, is getting an expert.

You'll be not the least but surprised to find out which one of you is at the high end because we've learned that Oregon's nirvana since we've been here but as I said, the low end is 8%. We also have 23%, 18% and 16% that's the current fiscal year but that does track prior years. In my experience differences like that can genuinely be explained one of four ways at least. One is either attorneys aren't asking for experts. The court's not granting them. There's something different systematically about the kinds of cases there in one district versus another or there's some larger norm in the district that no one asked for experts.

The Department of Justice doesn't really bring them in. The federal defender doesn't bring them him. Panel reps don't bring them in. That happens rarely. I am curious if you all would be willing to hazard an explanation on what's going on in your respective district because we do have one of the highest rates here but we also have one of the nation's lowest rates and since the rep from Oregon has to go and since you're at the high end, maybe you could start with your explanation.

Tom Coan: Thank you, Professor. Yeah. I think in our district, there is a high percentage of the use of experts for a couple of reasons. The Federal Defender's Office . . . let me step back. When I first started to go into CJA rep conferences, the national conference about six or seven years ago, I

was really surprised when we had speakers up there promoting and encouraging us to use more experts because the data shows when you use experts you get better results.

Steve Wax back here at home was preaching us just the opposite. "Hey, guys. You got to slow down. We're using experts too often." We need a better plan. If you got to use an expert, we need a real concrete plan for what they're being used for and he was specifically talking about investigators. I think there has been a culture in Oregon of using investigators regularly, psychologists in a lot of cases. I myself, I start almost every case of the paralegal because with the documents that we have now, having a paralegal who's really tech savvy and knows how to organize documents and review documents and summarize them and index them, an attorney doesn't have to be doing that.

You can get a paralegal as a big market for them out there who will do really good work for you for half the attorney rate. I think it's a culture here that most everybody does use it but we use that for different reasons. I do apologize. I'll be happy to answer any questions by mail or otherwise. I appreciate all of you work on the Committee and that's a lot of work. Thank you very much for doing this.

Dr. Rucker: Thank you for being here.

Prof. Gould: For the rest of you whose numbers aren't quite that high. In fact, not even close. Any explanations?

Lori Nakaoka: I'm going to hazard to guess that Idaho is the 8%.

Prof. Gould: You're right.

Lori Nakaoka: Yeah . . . I think there's a lot of different reasons for this. In speaking with Kathleen Elliot, we talked about this specifically yesterday and she said there was a discord or a disconnect between the national level, what the national standard, what she understands the national standards to be which is encouraging the use of experts and service providers with our district.

I think the culture in our district is that we utilize these ancillary services for the special cases, the mega cases or the cases that are going to trial and there's a hesitancy to use the services routinely. For example, Mr. Coan said he uses a paralegal in every case. That doesn't happen in our district. We use paralegals again for large discovery cases or cases that are going to trial. Why, because we don't feel like we, that we are entitled to use a paralegal in every case. It's a cultural thing and I think that maybe we need to, we also, we don't have a strong leadership in the CJA community.

We are kind of on our own and we look to our judges for what we are thinking is the appropriate use of resources.

I've asked for resources and been denied and I think that once you start getting denied, you get gun shy about it. There's a chilling effect. Other attorneys see request being denied and they're like, "Why should I put the time into ask because I'm going to be denied?" That's one of the things that I was commenting in my testimony, my paper testimony, is that the judicial involvement in management of resources can negatively impact the quality of our representation.

Dr. Rucker: I know we're overtime. If either any of you want to add something quickly, great. If not, we can end it at that. Do you want to add? Okay. When the judges want an answer, we're going to get answered. The rest of you.

Jennifer Horwitz: Shall I go ahead? Are you willing to tell me where my district fell?

Prof. Gould: Certainly. Western Washington, 16%.

Jennifer Horwitz: I'm very surprised by that. I don't know the answer but here's what I can tell you about what I do know. I think that the standards of practice and our district are very high and we also definitely have a community. It's not the same as walking into a Federal Defender's Office and having your colleagues down the hall but it's close. We have a list serve that's managed by our CJA administrator; we get together for brown bag lunches. We're pretty tight that way and support each other.

What I would say about my district which I think operates very well compared to a lot of other district from what I understand; I think one of the places that we have the biggest fight is with expert requests. Routinely, when I request an expert and I say, "Look. I've talked to the expert. This is what they charge. This is how many hours I think I'm going to need. This is the amount I'm asking for." I'm not approved for the amount I'm asking for. I'm going to approve for a lower amount. I have to keep going . . .

Prof. Gould: Why?

Jennifer Horwitz: I'm just trying to think about what the response has been. I'm not sure if there's been an explanation or if it's just been the judge saying crossing the amount out and just saying, "I'm just going to give you $2500 right now." Then I had to go back several times sometimes. I think the other problem is that the rates that these experts are going to get paid at makes it very hard to find the experts that you need to work at that rate. I've had the experience where I have an expert and I have a really good experience

with the expert and then I go back a couple of years later on a different case and the expert is like, "That was just too big of a pain. I had to wait too long for payment. I can make more money billing at my regular rate. I'm not available to do these kind of cases anymore."

Prof. Gould: I want the other two. The other two of you. I will tell you, you're both . . . your districts around a quarter of cases.

Pete Schweda: I think . . . this is really recent. It's become harder to get them. There's more denials. When there is an approval, the amount that's authorized is lower than what was asked for, there is a greater emphasis on sharing experts and even investigators even though there's inherent conflicts of interest between defendants, there is still the imposition of trying to share an investigator and I think the complexity of the case sometimes, it isn't a very complex case and you don't need an expert and also the strength of the government case sometimes drives the decision on whether to get an investigator or get an expert.

Prof. Gould: And finally, from Montana.

Palmer Hoovestal: I think it's pretty case specific for us.

Dr. Rucker: Would you speak into the mic, please?

Palmer Hoovestal: Pardon me. I think it is pretty case specific for us. If you don't need an expert, then we won't ask for one. First, with murder case, we need the DNA expert, we'll ask for one. Fiber expert, we'll ask for one but again, I'd mirror the comments of my colleagues. It's limited to the statutory maximum. Then you have to go back. That causes a problem with the experts. They don't get paid. They don't get paid quickly. It's just problematic.

Prof. Gould: I must say that confused me. Are you saying that as a result you're not going to find the experts because it's just too much trouble or . . .

Palmer Hoovestal: No.

Prof. Gould: Help me understand this. If it's difficult to go get the expert, how does that then translate to a low rate of expert use?

Palmer Hoovestal: Again, it depends on the case. If it's a murder case and we need expert testimony, then we will do what we have to do to get the expert. We'll file the motion. We'll provide a brief. We'll provide an affidavit but it's an wieldy process. You got to do it again and the result is that experts don't tend to want to participate or allow us to use them. In a basic case where a

drug case where the evidence is overwhelming. It really amounts to a plea agreement sentencing issues, probably don't need an expert. We don't ask for one. It's case specific I think in our district.

Prof. Gould: Dr. Rucker.

Dr. Rucker: I want to thank the panel very much for your candidness and your comments. It was really very helpful to us. If you think of anything else in the coming days or weeks, please feel free to send your comments to us. You can email them to us at cjastudy.fd.org and once again, we really do appreciate all your time and your comments and help you with this. Thank you very much.